



DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2021-0041]

Notice of Decision to Revise the Requirements for the Importation of Plums (*Prunus domestica*) From Chile Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to revise the requirements relative to the importation into the United States of plums from Chile. Based on the findings of a commodity import evaluation document, which we made available to the public for review and comment through a previous notice, we have determined that, in addition to the existing option of irradiation, plums from Chile may safely be imported under a systems approach for mitigation of the risk posed by European grapevine moth, with an additional option for fumigation with methyl bromide.

DATES: The articles covered by this notification may be authorized for importation under the revised requirements after [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 851-2352; Claudia.Ferguson@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in "Subpart L-Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-12, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56-4 of the regulations provides the requirements for authorizing the importation of fruits and vegetables into the United States, as well as revising existing requirements for the importation of fruits and vegetables. Paragraph (c) of that section provides that the name and origin of all fruits and vegetables authorized for importation into the United States, as well as the requirements for their importation, are listed on the internet in APHIS' Fruits and Vegetables Import Requirements database, or FAVIR (<https://epermits.aphis.usda.gov/manual>). It also provides that, if the Administrator of APHIS determines that any of the phytosanitary measures required for the importation of a particular fruit or vegetable are no longer necessary to reasonably mitigate the plant pest risk posed by the fruit or vegetable, APHIS will publish a notice in the *Federal Register* making its pest risk documentation and determination available for public comment.

Chile plums (*Prunus domestica*) are currently listed in FAVIR as authorized for importation into the United States. Following detections during preclearance inspections in Chile of European grapevine moth (EGVM; *Lobesia botrana*) larvae and pupae in plums intended for shipment to the United States, on April 1, 2021, however, APHIS issued a Federal Order (DA-2021-04)¹ modifying the requirements for such imports to prevent the introduction of EGVM. The Federal Order required plums exported to the United States from Chile to be irradiated with a minimum absorbed dose of 400 Gy upon arrival in the United States or subjected to methyl bromide fumigation that was conducted in Chile under an APHIS

¹ To view the Federal Order, go to:
https://www.aphis.usda.gov/import_export/plants/plant_imports/federal_order/downloads/2021/da-2021-04.pdf.

preclearance program. The allowance for methyl bromide fumigation provided for in the Federal Order ended on May 31, 2021.

The national plant protection organization (NPPO) of Chile has requested that APHIS revise the import requirements for plums from Chile to the United States to allow for alternative mitigations to address EGVM other than irradiation. In response to this request from the NPPO, APHIS prepared a commodity import evaluation document (CIED). The CIED recommended that, in addition to irradiation, the EGVM risk associated with the importation of plums from Chile could also be mitigated by a systems approach or by methyl bromide fumigation in Chile or at the port of entry in the United States.

Accordingly, in accordance with the requirements of § 319.56-4, we published a notice² in the *Federal Register* on November 3, 2021 (86 FR 60613-60614, Docket No. APHIS-2021-0041), in which we announced the availability, for review and comment, of the CIED.

We solicited comments on the notice for 60 days ending January 3, 2022. We received 35 comments by that date. They were from producers, importers, U.S. and Chilean trade associations, a port authority, the Government of Chile, and individual members of the public. All but two supported the proposal. The comments are discussed below by topic.

The commenters who opposed the proposed systems approach viewed irradiation as a more effective treatment approach. One commenter stated that our proposed systems approach may be inadequate to mitigate the risk of an EGVM introduction via the importation of plums from Chile because the plums are produced in a region where EGVM is prevalent. The commenter further suggested that not all farms that produce the plums will be able to comply with our systems approach requirements and that it was likely that the great majority of the smaller farms in proximity to the larger ones will not be able to properly mitigate the pest.

² To view the notice and the CIED, go to www.regulations.gov. Enter APHIS-2021-0041 in the Search field.

According to the commenter, restricted pests have been found before in other commodities that are currently imported from Chile under systems approach.

We do not agree with these commenters that irradiation should be the only approved mitigation for the importation of plums from Chile into the United States. APHIS has determined that the systems approach will also provide an appropriate level of phytosanitary protection. We note that the systems approach includes measures that specifically address the commenters' concerns: Only sites that are registered with the NPPO may export under the systems approach, registered sites must trap for EGVM according to guidelines approved by APHIS, and all sites in regulated or control areas for EGVM must be inspected by the NPPO for EGVM. Additionally, all shipments of plums from Chile will be subject to inspection for quarantine pests under the terms of APHIS preclearance, and may be subject to inspection at ports of entry into the United States.

We also note that the commenters' concerns did not pertain to the efficacy of methyl bromide.

One of the commenters also opposed fumigation with methyl bromide on the grounds that it is harmful to human health. The commenter expressed the view that methyl bromide should be banned.

While APHIS regulates the use of methyl bromide as a pest risk mitigation measure, the Agency does not have the statutory authority to regulate for public health or ban its usage on public health grounds.

One of the commenters writing in support of the proposal requested that to ensure continuity in the market, we authorize entry of the fruit, subject to fumigation or quarantine requirements as needed but not irradiation, prior to the effective date of this notice by means of a Federal Order.

As noted previously in this notice, the regulations in paragraph (c) of § 319.56-4 provide that if the Administrator determines that any of the phytosanitary measures required for the

importation of a particular fruit or vegetable are no longer necessary to reasonably mitigate the plant pest risk posed by the fruit or vegetable, APHIS will publish a notice in the *Federal Register* making its pest risk documentation and determination available for public comment. The paragraph further provides that this notice will be published, and public comment solicited, prior to allowing importation of the fruit or vegetable subject to the phytosanitary measures specified in the notice. These regulatory provisions preclude the issuance of a Federal Order in order to relieve restrictions on the importation of plums from Chile as requested by the commenter.

Finally, several commenters asked that this final notice be issued and effective the day the comment period closed.

As a *Federal Register* document, this notice is subject to the review and clearance processes that are required for all such documents issued by the USDA.

Therefore, in accordance with the regulations in § 319.56-4(c), we are announcing our decision to authorize the importation into the United States of plums from Chile subject to the conditions listed in the CIED that accompanied the initial notice.

These conditions will be listed in the FAVIR database (available at <https://epermits.aphis.usda.gov/manual>). In addition to these specific measures, plums from Chile will be subject to the general requirements listed in § 319.56-3 that are applicable to the importation of all fruits and vegetables.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the recordkeeping and burden requirements associated with this action are included under the Office of Management and Budget (OMB) control number 0579-0049.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to

provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this notice, please contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851-2483.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this action as not a major rule, as defined by 5 U.S.C. 804(2).

Authority: 7 U.S.C. 1633, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 19th day of January 2022 .

Mark Davidson,
Acting Administrator,
Animal and Plant Health Inspection Service.